

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEMONTE JOHNSON,	§
	§ No. 157, 2010
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0706027297
	§
Plaintiff Below-	§
Appellee.	§

Submitted: May 10, 2011

Decided: June 17, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 17<sup>th</sup> day of June 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Demonte Johnson, filed an appeal from the Superior Court’s February 24, 2010 violation of probation (“VOP”) sentence. Because the appeal is now moot, it will be dismissed.

(2) The record reflects that Johnson’s appeal from the Superior Court’s February 24, 2010 VOP sentencing order was filed on March 31, 2010. Johnson’s counsel filed a non-merit brief under Supreme Court Rule 26(c) on October 15, 2010. The State responded with a motion to remand on November 8, 2010. On November 22, 2010, this Court granted the State’s

motion to remand because it appeared that Johnson had been sentenced on his VOP to more Level V time than remained on his original sentence.

(3) On December 21, 2010, the Superior Court issued a modified VOP sentencing order. On February 17, 2011, Johnson's counsel filed a response to the modified sentencing order, asserting that it improperly increased Johnson's sentence by a year and had been entered improperly without Johnson and his counsel present. On those grounds, Johnson's counsel requested that the sentencing order be vacated and the matter again be remanded to the Superior Court. The State filed a reply on March 3, 2011, agreeing to the remand, but on the ground that the sentencing order's effective date was incorrect.

(4) By Order dated March 8, 2011, this Court ordered the matter remanded to the Superior Court for review of its modified December 21, 2010 VOP sentencing order and correction of Johnson's VOP sentence. On April 12, 2011, the Superior Court issued a corrected VOP sentencing order, which provides, effective September 30, 2009, for a 3-year, 2-month Level V sentence, to be suspended after 3 years for 6 months of Level III probation. In their supplemental memos, both the defendant and the State represent that the Superior Court's April 12, 2011 VOP sentencing order correctly reflects the amount of Level V credit to which Johnson is entitled.

(5) A legal action becomes moot when a controversy between the parties no longer exists due to the occurrence of events following the filing of the action.<sup>1</sup> Based upon the representations of the parties in this case, we conclude that there is no longer a controversy between the parties and that this matter is now moot and should be dismissed.

NOW, THEREFORE, IT IS ORDERED that this matter is hereby DISMISSED as moot.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>1</sup> *Mentor Graphics Corp. v. Shapiro*, 818 A.2d 959, 962-63 (Del. 2003).